Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services	PR Docket No. 92-235

COMMENTS

Network USA ("NUSA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM") adopted by the Commission in the above-referenced proceeding.[1] NUSA supports the Commission's commitment to introducing market-based incentives to promote more efficient use of this spectrum, and wishes to comment specifically on the proposed "shared-exclusivity" rules for private land mobile radio service ("PLMR") providers. Specifically, NUSA urges the Commission to ensure that channel exclusivity is also available for commercial mobile radio service ("CMRS") providers in the UHF and VHF frequency bands.

I. **Statement of Interest**.

Network USA is one of the largest and fastest growing

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[1] Report & Order & Further Notice of Proposed Rule Making, PR Docket No. 92-235, adopted June 15, 1995 (FCC 95-255)("Report & Order").

providers of one-way messaging services in the United States. NUSA provides paging services through its own transmission facilities, primarily in the Southeast and Mid-Atlantic regions of the Country. The company has over 193,000 subscribers, and together with its affiliates, serves over 800,000 customers with reliable local, regional and nationwide paging service. The company primarily operates its Private Carrier Paging ("PCP") facilities on the 152.480 MHz Business Radio service, shared frequency. NUSA has been a participant in various FCC rulemaking proceedings pertaining to PCP paging issues.

As explained in detail below, the exclusivity rules proposed in the FNPRM could potentially have a significant adverse impact on NUSA's business, and to the business of similarly situated CMRS providers in the "refarmed" frequency bands. Due to its experience in several areas of FCC-licensed mobile services, NUSA is well-qualified to comment on the proposed rules. Thus, NUSA has standing as an interested party to file formal comments in this proceeding.

II. **Background/Summary of Comments**.

In November 1992, the Commission released a Notice of Proposed Rule Making proposing extensive revisions to the PLMR rules.[2] The Commission stated that its goals were: (1) to

[2] Notice of Proposed Rule Making, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992)("Refarming Notice").

increase channel capacity in the PLMS bands below 800 MHz, (2) to promote more efficient use of these channels, and (3) to simplify the PLMR rules. See Refarming Notice at ¶ 1.

Subsequently, Congress passed the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), and amended the Communications Act of 1934 (the "Act"). The Budget Act, among other things, reclassified wireless mobile services into two categories: private mobile radio service (PMRS) and commercial mobile radio service (CMRS). Congress has defined CMRS as "any mobile radio service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such class of eligible users as to be effectively available to a substantial portion of the public[.]" See 47 U.S.C. § 332(d)(1). Under this definition, and pursuant to subsequent rule making proceedings, the Commission classified the following services as PMRS: public safety, government services, and businesses and other private entities operating mobile systems exclusively for internal use. The Commission classified private carriers licensed in the business radio services as CMRS; these included paging companies such as NUSA, operating on the 152.480 MHz shared frequency.

In the Report & Order, the Commission adopted technical and operational rule changes for PLMR services. Concurrently, the Commission released a FNPRM, seeking comments on the proposed market-based incentives to be introduced in the PLMR bands to promote efficient use of the UHF and VHF spectrum.

CMRS operations, pursuant to the reclassifications, are not subject to the new PLMR rules, nor are they subject to the proposals set forth in the FNPRM. However, the PLMR rules as proposed, may result in detrimental consequences for CMRS operators in the VHF and UHF bands. Simply stated, because the Commission has proposed exclusivity only for the PMRS channels, non-exclusive licensees will flock to shared-use CMRS channels to avoid paying to lease channel capacity from exclusive licensees. In short, the unintentional consequence of adopting exclusivity rules for the PMRS services will be to turn the CMRS frequencies in adjacent bands into overcrowded frequency "ghettos." Unless the FCC simultaneously adopts exclusivity rules in both the CMRS and PMRS bands, CMRS operators and their customers will suffer a decline in the reliable paging and two-way services now being offered.

III. Both CMRS and PMRS in the UHF and VHF Bands <u>Should Be Entitled to Exclusivity</u>.

In the FNPRM, the Commission proposes market based incentives to encourage efficient use of the PMRS bands. FNPRM at ¶ 110. Specifically, the rules would allow licensees to have the option of entering into contractual agreements with neighboring co-channel licensees to establish exclusive area assignments, thereby only allowing potential new licensees to be licensed with the consent of all of the parties to the agreement. Licensees that are parties to exclusivity agreements and that have completed the conversion of their systems to narrowband technologies, would be able to lease any excess capacity to non-exclusive licensees. FNPRM at ¶ 129. In the FNPRM, the Commission sought comments on how best to implement exclusivity, and how to remedy imperfections in the plan as outlined. Id. at ¶ 132.

NUSA supports the Commission's proposal to implement market based incentives in the VHF and UHF bands; however, it urges the Commission not to adopt exclusivity rules only for PMRS operators, while ignoring CMRS operators in these frequency bands. Business sense dictates that nonexclusive licensees would opt to use spectrum for free, and to avoid paying to lease channel capacity if possible. Therefore, new applicants will in all likelihood migrate to shared-use CMRS channels in the VHF and UHF bands.

The result could be disastrous for incumbent CMRS operators. If the refarming proposal is adopted without allowing exclusivity for CMRS operators, CMRS operators could experience a dramatic increase in applicants and operators on these business radio channels. Some of these channels are already highly congested, and could become "frequency ghettos," where speculators and others who will not qualify for exclusive PMRS channels will migrate.

A simple and sensible way to avoid this problem would be to concurrently propose shared-exclusivity for CMRS providers. PMRS and CMRS providers in the UHF and VHF frequency bands should both have the option to obtain shared exclusivity, thereby moderating future licensing on the exclusive bands in their service areas. Even though PMRS and CMRS are regulated under somewhat different Commission rules, both licensees compete with one another to obtain spectrum for their services. Therefore, there is precedent to regulate these "like services" similarly.

For example, the Commission proposes to allow exclusive PMRS licensees to lease excess capacity to "any party without restriction in order to promote more flexible use of this spectrum," not just PMRS operators. FNPRM at ¶ 134. Therefore, it is fair and logical for both commercial and private mobile radio services to be equally entitled to exclusivity.

In the FNPRM, the Commission cited numerous benefits to be derived from exclusivity, including encouraging efficient use of the spectrum and promoting the use of more efficient technologies. FNPRM at ¶ 110. The Commission also cited specific public interest benefits of exclusivity: availability of more channels, and better quality of service. Id. Moreover, the Commission noted that congestion and the risk of deterioration of service to unacceptable levels could be identifiable with the continual use of shared-use channels. Id. at ¶ 111. The FCC should take the opportunity in this rule making proceeding to promote these benefits, and avoid these drawbacks of shared-use channels, not just for PMRS, but for all land mobile service providers in the UHF and VHF bands.

IV. Conclusion

FOR ALL THE FOREGOING REASONS, NUSA supports the Commission's proposal to adopt exclusivity rules, but urges the Commission to adopt exclusivity rules only on a consistent, uniform, and non-discriminatory basis for all PMRS and CMRS service providers in the UHF and VHF bands.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 15th day of September, 1995, copies of the foregoing Comments were mailed, postage prepaid, to the following:

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